

**December 9, 2005**

**DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY**

**Appeal**

Name of Petitioner: Marilyn R. Sutton

Date of Filing: November 9, 2005

Case Number: TFA-0132

On November 9, 2005, Marilyn R. Sutton filed an appeal from a determination issued to her on October 6, 2005 by the Department of Energy's (DOE) Office of Legacy Management (LM). In that determination, LM responded to a request for documents that Ms. Sutton submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. LM determined that all documents possibly responsive to the request were contained in an electronic database. LM did not provide Ms. Sutton with the documents, but provided Ms. Sutton with instructions for accessing and searching the database. This appeal, if granted, would require LM to perform an additional search and either release any responsive documents or issue a new determination justifying the withholding of those documents.

**I. Background**

On August 12, 2005, Ms. Sutton filed a request for the enclosures contained in a letter from Mr. James J. Fiore, Deputy Assistant Secretary of Energy, to Mr. William R. Augustine, Deputy Chief Programs Management Division, U.S. Army Corps of Engineers, dated October 19, 1999. Ms. Sutton included a copy of this letter in her request. The letter did not identify the titles of the enclosures. Letter from Marilyn R. Sutton to James J. Fiore, Deputy Assistant Secretary of Energy (August 12, 2005). Ms. Sutton's request was forwarded to LM for processing. Letter from Abel Lopez, Director, DOE FOIA/Privacy Act Group, to Marilyn R. Sutton (September 15, 2005). LM determined that any documents responsive to Ms. Sutton's request would be located in the "Considered Sites Database," an electronic database maintained by LM. Letter from Tony R. Carter, LM, to Marilyn R. Sutton (October 6, 2005) (Determination Letter). LM did not provide Ms. Sutton with any records; rather, LM provided Ms. Sutton with instructions for accessing and searching the specified database. *Id.*

In her appeal, Ms. Sutton questions whether LM performed a search for the requested documents prior to referring her to the database. Letter from Marilyn R. Sutton to OHA (November 3, 2005).

## II. Analysis

In responding to a request for information filed under the FOIA, it is well established that an agency must “conduct a search reasonably calculated to uncover all relevant documents.” *Truitt v. United States Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). “The standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials.” *Miller v. United States Department of State*, 779 F.2d 1378, 1384-85 (8<sup>th</sup> Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Ms. Doris M. Harthun*, 28 DOE ¶ 80,282 (2003).

In reviewing this appeal, we contacted LM to ascertain the scope of the search. LM informed us that it searched its electronic databases and determined that documents responsive to Ms. Sutton’s request would be located in the “Considered Sites Database.” LM did not conduct a search of its hardcopy, paper files. Electronic Mail Message from Sheila Dillard, LM, to Diane DeMoura, OHA, November 17, 2005. A search of this database yielded the letter mentioned by Ms. Sutton. However, since the letter did not specify the titles of the enclosures, it was impossible for Ms. Sutton to determine which, if any, of the other documents in the database were the documents she sought. After discussing this result with LM, we learned that a search of LM’s hardcopy files would be necessary in order to determine which documents were the enclosures to the identified letter and whether LM had those documents. *Id.*

Accordingly, we will remand this matter to LM to perform an additional search of its paper files for the requested documents. After completing its search, LM is to provide Ms. Sutton with any responsive documents or to issue a new determination justifying the withholding of any responsive information.

It Is Therefore Ordered That:

- (1) The Appeal filed on November 9, 2005 by Marilyn R. Sutton, OHA Case No. TFA-0132, is hereby granted as set forth in paragraph (2) below.
- (2) This matter is hereby remanded to the Office of Legacy Management for further proceedings in accordance with the instructions set forth in this Decision and Order.
- (3) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district

in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: December 9, 2005